

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
JUL 18 2006
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____

ROARK & HARDEE L.P. d/b/a
THE WAREHOUSE SALOON AND
BILLIARDS, BILL HARDEE, 219 L.P. d/b/a
219 WEST, PAUL SILVER, DEI GRATIA,
INC. d/b/a THE ELYSIUM, JOHN
WICKHAM, PUB DRAUGHT, INC. d/b/a
LOVEJOYS TAP ROOM AND BREWERY,
JOSEPH (CHIP) TAIT, BEERLAND,
RANDALL STOCKTON, TENNIA B.
BROWN d/b/a HORSESHOE LOUNGE, GMC
INVESTMENT, INC. d/b/a EGO'S, CANARY
ROOST, INC., CANARY HUT, INC., GAIL
E. JOHNSON, SHEENA SEMMLER,
JANET BUDMAN, KEEP AUSTIN FREE
PAC, TONY SIRGO, and EDWARD CHECK,

10

CITY OF AUSTIN

CASE NO. A-05-CA-837 SS

CITY OF AUSTIN'S LIST OF TRIAL WITNESSES AND EXPERT WITNESSES

TO THE HONORABLE SAM SPARKS, UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant City of Austin and files this listing of Witnesses and Expert

Witnesses.

I. Trial Witnesses

1. Lynn E. Carter
P.O. Box 1546
Austin, Texas 78767-1546
(512) 974-2310 / (512) 974-6490 [fax]
Defendant's attorney. May testify in regard to whether attorneys' fees and costs are reasonable and necessary.

2. Edward Check
c/o Marc A. Levin, Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701
(512) 469-7474 / (512) 469-7480 [fax]

May testify by deposition testimony.

3. Heath Douglas, Employee of Warehouse Saloon & Billiards
509 E. Ben White Blvd.
Austin, Texas 78704
(512)422-1121
May testify by deposition testimony in this cause (April 4, 2006).

4. Marcel Elizondo, Sanitarian
Health and Human Services, Water and Air Pollution Protection Unit
Austin, Texas
(512) 972-5702
May be called to testify in regard to complaint investigations, inspections of establishments in regard to the smoking ordinance, communications with owners, operators and/or employees of establishments, and enforcement of the ordinance. Also may be called to testify regarding communications with Plaintiffs or witnesses.

5. Carolyn Espeseth, Municipal Court Prosecutor
c/o Lynn E. Carter
P.O. Box 1546
Austin, Texas 78767-1546
(512) 974-2310 / (512) 974-6490 [fax]
May be called to testify regarding criminal prosecutions of violations of the smoking ordinance.

6. John Gabrielson, # 5342
Austin Police Officer, Austin Police Department
715 East 8th Street
Austin, Texas 78701
512-974-5000
May be called to testify as to his knowledge of persons smoking in bars and his issuance of citations for such smoking.

7. Daniel Ray Gonzalez, Sanitarian Senior
Health and Human Services, Water and Air Pollution Protection Unit
Austin, Texas
(512) 972-5684
May be called to testify in regard to complaint investigations, inspections of establishments in regard to the smoking ordinance, communications with owners, operators and/or employees of establishments, and enforcement of the ordinance. Also may be called to testify regarding communications with Plaintiffs or witnesses.

8. Brandlin Hamilton, Bartender
Mickey's Thirsty I Lounge
11806 N. Lamar Blvd.
Austin, Texas 78753

(512) 836-9991

May be called to testify concerning loss of income due to smoking ban, compliance efforts, and enforcement issues regarding warning and citations issued.

9. Bill Hardee, Owner/Operator
The Warehouse Saloon and Billiards
c/o Marc A. Levin, Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701
(512) 469-7474 / (512) 469-7480 [fax]
Plaintiff. May be called to testify by deposition testimony.
10. Jeffrey Herring, Smoking Investigator
Environmental and Consumer Health Unit
City of Austin Health and Human Services Department
2808 Webberville Road, Room 161
Austin, Texas 78702
(512)972-6281 and/or (512)972-5400
Will testify in regard to complaint investigations, inspections of establishments in regard to the smoking ordinance, communications with owners, operators and/or employees of establishments, and enforcement of the ordinance. May also testify in regard to the numbers of complaints, violations, and criminal complaints that have been recorded by the City of Austin Health and Human Services Department. (HHSD). Also may testify regarding communications with Plaintiffs or witnesses.
11. Philip Huang, M.D., M.P.H., Medical Director, Chronic Disease Prevention
Chief, Bureau of Chronic Disease and Tobacco Prevention
Texas Department of State Health Services
1100 W. 49th Street
Austin, Texas 78756
(512) 458-7200
May be called briefly if necessary. See testimony from Preliminary Injunction hearing dated 10/11/05; see expert designation. Dr. Huang has personal knowledge and expertise in regard to air quality testing performed in Austin bars before and after the effective date of the smoking ordinance. Additional testimony may be offered in regard to harmful effects of second-hand smoke, plaintiffs' claims of financial harm and/or air quality tests of bars in Austin. See recent report of U.S. Surgeon General.
12. Ryan Hunter
May be called as a rebuttal witness.
13. Robert "Bob" Jerome, Day Manager of Warehouse Saloon & Billiards
509 E. Ben White Blvd.
Austin, Texas 78704
(512)422-1121
May be called to testify by deposition testimony in this cause (April 4, 2006).

14. Shannon Jones, III, Assistant Director Public Health
City of Austin Health and Human Services Department
15 Waller
Austin, Texas 78702
(512) 972-5400
May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also testify in regard to the numbers of complaints, violations, and criminal complaints that have been recorded by the City of Austin Health and Human Services Department. (HHSD).

15. Gail Johnson, Owner/Operator
Ego's, The Canary Hut, The Canary Roost
c/o Marc A. Levin
Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701
(512) 469-7474 / (512) 469-7480 [fax]
Plaintiff. May be called to testify by deposition testimony.

16. Glenn C. Larimore, Sanitarian
Health and Human Services, Water and Air Pollution Protection Unit
Austin, Texas
(512) 972-5649
May be called to testify in regard to complaint investigations, inspections of establishments in regard to the smoking ordinance, communications with owners, operators and/or employees of establishments, and enforcement of the ordinance. Also may testify regarding communications with Plaintiffs or witnesses.

17. Mickey Leathers, Owner/Operator
Mickey's Thirsty I Lounge
11806 N. Lamar Blvd.
Austin, Texas 78753
(512) 836-9991
May be called to testify concerning loss of income due to smoking ban, compliance efforts, and enforcement issues regarding warning and citations issued.

18. T.C. Leshikar, Owner/Operator - Tambaleo
302 Bowie
Austin, Texas 78703
(512) 472-3213
Will submit testimony during Preliminary Injunction Hearing on 10/11/05.

19. Marc A. Levin, Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701
(512) 469-7474 / (512) 469-7480 [fax]
Plaintiffs' attorney. May cross-examine in regard to attorney fees and regarding his involvement in criminal prosecutions related to the smoking ordinance.

20. David Lopez, Manager
Environmental and Consumer Health Unit
City of Austin Health and Human Services Department
15 Waller
Austin, Texas 78702
(512) 972-5400
May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures and; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also be called to testify in regard to the numbers of complaints, violations, and criminal complaints that have been recorded by the City of Austin Health and Human Services Department. (HHSD).

21. David Lurie, Director of Public Health
City of Austin Health and Human Services Department
601 Airport Boulevard
Austin, Texas 78702
(512) 972-5400
May introduce testimony from Preliminary Injunction hearing on 10/12/05. May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures and; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also be called to testify in regard to the numbers of complaints, violations, and criminal complaints that have been recorded by the City of Austin Health and Human Services Department. (HHSD).

22. Laura Nunez
1905 Anita Dr., #3
Austin, Texas 78704
(512) 791-5653
May introduce Preliminary Injunction Hearing testimony on 10/11/05.

23. Sarah Martin, Bartender
Rackdaddy's
4410 E. Riverside Drive
Austin, Texas 78741
(512) 389-1577

May be called to testify regarding loss of income due to smoking ordinance, compliance efforts, and enforcement issues.

24. Karina Moore, Public Health Educator II
Environmental and Consumer Health Unit
City of Austin Health and Human Services Department
2808 Webberville Road, Room 161
Austin, Texas 78702
(512) 972-5653
May introduce testimony from Preliminary Injunction Hearing. May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures and; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also be called to testify as to his inspections of bars for compliance with the smoking ordinance. May also be called to testify in regard to communications with bar owners, operators and employees regarding the smoking ordinance.
25. Homer Moyers, Employee of the Canary Roost
11900 Metric Blvd.
Austin, Texas 78758
May introduce deposition testimony in this cause (April 10, 2006).
26. Carol Sahm, Compliance Coordinator
Environmental and Consumer Health Unit
15 Waller Street
Austin, Texas 78702
(512) 972-5600
May be called to testify as to violations of the smoking ordinance.
27. Quint Sebek, # 3454
Austin Police Officer, Austin Police Department
715 East 8th Street
Austin, Texas 78701
512-974-5000
May be called to testify as to his knowledge of persons smoking in bars and his issuance of citations for such smoking.
28. Paul Silver, Owner/Operator
219 West
c/o Marc A. Levin, Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701
(512) 469-7474 / (512) 469-7480 [fax]
Former Plaintiff. May be called to testify by deposition testimony.

29. Tony Sirgo
c/o Marc A. Levin, Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701
(512) 469-7474 / (512) 469-7480 [fax]
Plaintiff. See deposition testimony.

30. Joseph "Chip" Tait, Former Owner/Operator - Lovejoys
c/o Marc A. Levin, Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701
(512) 469-7474 / (512) 469-7480 [fax]
Plaintiff. May be called to testify by deposition testimony.

31. Azita Vaiszadeti, Employee of the Canary Roost
11900 Metric Blvd.
Austin, Texas 78758
May be called to testify by deposition testimony in this cause (April 10, 2006).

32. Robert Wright, Supervisor
Environmental and Consumer Health Unit
City of Austin Health and Human Services Department
2808 Webberville Road, Room 161
Austin, Texas 78702
(512) 972-5654
May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures and; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also be called to testify in regard to communications with bar owners, operators and employees regarding the smoking ordinance.

Defendant City of Austin also incorporates and designates all witnesses identified by Plaintiffs.

II. Expert Witnesses

1. Philip Huang, M.D., M.P.H.
Medical Director, Chronic Disease Prevention
Chief, Bureau of Chronic Disease and Tobacco Prevention
Texas Department of State Health Services
1100 W. 49th Street
Austin, Texas 78756
512/458-7200
May call briefly if necessary. See testimony from Preliminary Injunction hearing dated 10/11/05; see expert designation. Dr. Huang has personal knowledge and expertise in regard to air quality testing performed in Austin bars before and after the effective date of the smoking ordinance. Additional testimony may be offered in regard to harmful effects of second-hand smoke, plaintiffs' claims of financial harm and/or air quality tests of bars in Austin. See recent report of U.S. Surgeon General.
2. Lynn E. Carter
P.O. Box 1546
Austin, Texas 78767-1546
(512) 974-2310
(512) 974-6490 [fax]
Defendant's attorney. May testify in regard to whether attorneys' fees and costs are reasonable and necessary.

Defendant incorporates by reference all witnesses listed by Plaintiffs.

RESPECTFULLY SUBMITTED,

DAVID ALLAN SMITH
CITY ATTORNEY

LYNN E. CARTER
Assistant City Attorney
State Bar No. 03925990
City of Austin Law Department
Post Office Box 1546
Austin, Texas 78767-1546
(512) 974-2310
(512) 974-6490 (facsimile)
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 18th day of July, 2006.

(Via Facsimile (512) 469-7480)

Marc A. Levin
Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701



LYNN E. CARTER

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